



THE COMMITTEE ON ENERGY AND COMMERCE

MEMORANDUM

May 16, 2012

To: Energy and Commerce Committee Republican Members

From: Subcommittee on Oversight and Investigations Majority Staff

Re: Investigation Update: Closed-Door Obamacare Negotiations

From: Messina, Jim
Sent: Friday, January 15, 2010 6:04 PM
To: Bryant Hall
Subject: FW: TAUZIN EMAIL

What the hell? This wasn't part of our deal.¹

Overview

The purpose of this memorandum is to update Republican Members on the Energy and Commerce Committee on the Committee's ongoing investigation into the potential agreements made by the White House and health care industry stakeholders prior to passage of the Patient Protection and Affordable Care Act (PPACA). As reported on April 17, 2012, the Committee's investigation is attempting to answer the following questions:

- Were "deals" made between the Administration and outside stakeholders that exchanged specific policy outcomes for public support of the law?
- Who made these deals, and to what extent was Congress excluded?
- What specifically was negotiated by the White House and these outside interests? What policies are now law as a result of these negotiations, and what did the White House obtain in exchange?

This investigation has produced further information regarding the substance of the "deal" between the White House and the Pharmaceutical Manufacturers of America (PhRMA), the details of which have never been fully disclosed to the public. Further, based on email exchanges and other primary source material, it appears that deal was reached not solely between PhRMA and the United States Senate Finance Committee, but that top personnel in the White House were involved in negotiating and approving this deal. The following update is based on

¹ PhRMA Document Production 0000410. At the time Bryant Hall was PhRMA's Senior Vice President for Federal Affairs.

internal records obtained from outside stakeholders who engaged in negotiations outside the public's view during the development and passage of PPACA.

I. Was there a deal?

The existence of an agreement or series of agreements between powerful health care industry stakeholders and the authors of PPACA is a widely known – albeit poorly understood – aspect of the health care law. Media accounts dating back to 2009 speculated on the existence and details of such deals leading up to the law's enactment. However, those accounts have lacked concrete evidence of exactly what policies the White House accepted or rejected as part of these agreements, and what the interest groups delivered in return. Moreover, media accounts and public statements from policymakers at the time were often conflicting or incomplete, failing to provide a clear picture to the American people about how this law was being written, and by whom.

For example, while President Obama referred to the agreement in June 2009, reports at the time also indicated that “many details of the...deal remained unclear.”² A month later, *The Wall Street Journal* reported that House Democrats had been told that the Administration “doesn't feel bound” by the agreement.³ Because of increased pressure from the Hill to scuttle the agreement, eventually the White House attempted to publicly support the deal in early August when *The New York Times* reported that the drug industry “...successfully demanded that the White House explicitly acknowledge for the first time it had committed to protect drug makers...”⁴ Yet, a week later reports still indicated that “[s]ince mid-July, the White House and the drug industry's lobby, PhRMA, have denied any specific agreement...”⁵

This investigation has confirmed the existence of a deal between the White House and PhRMA that explicitly bound both parties to certain commitments. As the email exchange at the top of this memorandum demonstrates, the deal was so clearly understood to be binding that White House Deputy Chief of Staff Jim Messina made direct contact with PhRMA's chief lobbyist for the negotiations regarding the deal to express his displeasure with an apparent violation of the agreement more than two months before the legislation was given final approval by Congress.

II. Why did the White House hide its involvement?

On June 20, 2009, the White House issued a 296-word statement from President Obama announcing an agreement between the nation's pharmaceutical companies and the Senate.⁶ The statement makes no mention of White House involvement.

² *Obama Announces Drug Companies Deal*, ASSOCIATED PRESS, June 22, 2009.

³ *Big Pharma Gets Played*, WALL STREET JOURNAL, July 16, 2009.

⁴ David D. Kirkpatrick, *White House Affirms Deal on Drug Cost*, NEW YORK TIMES, Aug. 5, 2009.

⁵ Alicia Mundy, *White House-PhRMA Memo Surfaces Again*, WALL STREET JOURNAL WASHINGTON WIRE, August 17, 2009.

⁶ Press Release, White House Office of the Press Secretary, Statement from President Obama on Agreement to Bring Down Drug Prices for Americans Seniors (June 20, 2009) (available at <http://www.whitehouse.gov/the-press-office/statement-president-obama-agreement-bring-down-drug-prices-americas-seniors>).

The investigation has determined that the White House, primarily through the Office of Health Reform Director Nancy Ann DeParle and Messina, with involvement from Chief of Staff Rahm Emmanuel, was actively engaged in these negotiations while the role of Congress was limited. For example, three days before the June 20 statement, the head of PhRMA promised Messina, “we will deliver a final yes to you by morning.”⁷ Meanwhile, Ms. DeParle all but confirmed that half of the Legislative Branch was shut out in an email to a PhRMA representative: “I think we should have included the House in the discussions, but maybe we never would have gotten anywhere if we had.”⁸

Given these facts, it is unclear why the White House did not fully disclose its involvement with outside stakeholders in the development of the legislation. Their efforts are particularly surprising given the President’s repeated promises of transparency.⁹

After this Committee initiated its investigation into the potential promises or agreements made between PhRMA, labor unions, insurers, medical associations, and other trade and advocacy organizations, the White House derided the Committee’s request for basic information about its legislative efforts as “vast and expensive.” The White House refused to produce any of the requested documents and only produced to the Committee a list of meetings based on “calendar entries and other readily available information.” These calendar entries do not provide information on the attendees or details of discussion. For example, the calendar provided by the White House identifies a July 7, 2009, event as follows: “Meeting with PhRMA representatives.”¹⁰ No further information is provided. This investigation, however, has revealed that this was not only *a* meeting between representatives of PhRMA and top White House aides; it was *the* critical meeting to solidify the deal. As a PhRMA representative said at the time: “It’s just to go over the principal elements of the deal w[ith] Rahm, Messina and DeParle.”¹¹

III. What did the White House promise to do?

Even news stories that indicated that there was a potential agreement with the pharmaceutical industry could not report the entirety of the agreement. The August *New York Times* story that reported White House acknowledgment of the deal “for the first time” could not report any specifics “beyond an agreed-upon \$80 billion” in cost savings.¹² This investigation will show that the agreement between the White House and the pharmaceutical industry was much more explicit. In the coming weeks the Committee intends to show what the White House agreed to do as part of its deal with the pharmaceutical industry and how the full details of this agreement were kept from both the public and the House of Representatives.

⁷ PhRMA Document Production 0000636.

⁸ PhRMA Document Production 0002179.

⁹ Not only did the President routinely promise to televise all health care negotiations, once in office he has hailed his willingness to combat the influence of “special interests.” See President Barack Obama, Weekly Address: Fighting for the Public Against Special Interests (January 23, 2010) (*available at* <http://www.whitehouse.gov/photos-and-video/video/weekly-address-fighting-public-against-special-interests>) (“I believed so strongly that the voices of everyday Americans...just weren’t being heard over the powerful voices of the special interests in Washington.”).

¹⁰ Letter from Robert F. Bauer, White House Counsel, to Energy & Commerce Comm. (April 27, 2011).

¹¹ PhRMA Document Production 0002162.

¹² Kirkpatrick, *supra* note 4.

After two years, the health care law has failed to lower costs while only increasing its unpopularity with the public. According to a PhRMA official: “[W]e got a good deal.”¹³

The important question to answer is what did the White House get in return.

¹³ PhRMA Document Production 0002215.